



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

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Memorandum

*September 14, 2009
Agenda Item 4.1*

Date: August 19, 2009
To: Administration and Legislation Committee
From: Liz Brazil, Contract Administrator & DBE Liaison Officer
Subject: **Disadvantaged Business Enterprise Participation**

Action Requested

This is an information item. ACCMA completed the Annual Anticipated DBE Participation Level (AADPL) for federal fiscal year 2009/2010, and will be submitting the attached California Department of Transportation (Caltrans), Exhibit 9B, Local Agency DBE Annual Submittal Form and attachments to Caltrans for their approval.

Discussion

In order to comply with the current DBE Race Conscious (RC) Program and as a result of a disparity study produced by Caltrans, ACCMA is required to submit to Caltrans three separate AADPLs. Attached is the ACCMA proposed overall AADPL of 5.18 percent, a Race-Conscious AADPL of 4.02 percent, and a Race Neutral AADPL of 1.16 percent. (See Attachment, Caltrans Exhibit 9-B).

ACCMA elected to use the Title 49 CFR Section 26.45 - *Use of California Unified Certifying Program DBE directory and Census Bureau Data* - methodology for determining the Base Figure or percentage of the overall federally funded contracts that should go to the DBEs if there was a level playing field.

The AADPL was established only for projects receiving Federal Highway Administration (FHWA) funding as required by legislation and was developed utilizing the Caltrans guidelines and approved methodology. The guidance in developing the AADPL was defined in the Caltrans Local Assistance Procedures Manual, Chapter 9, Section 9.7. The new DBE RC Program required contract goals are limited to only underutilized DBEs for FHWA funded projects. ACCMA will only use the RC AADPL for contract goals on projects funded by FHWA.

Financial Impact to the CMA

None

TO: Mr. Arthur Duffy
Caltrans District 4
District Local Assistance Engineer

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The Alameda County Congestion Management Agency (ACCMA) submits our AADPL information. We have established an AADPL of 5.18% (1.16 % Race Neutral; 4.02% Race Conscious) for the Federal Fiscal Year 2009 /2010, beginning on October 1 and ending on September 30.

Methodology

Title 49 CFR Section 26.45 provides five options for determining the Base Figure or percentage of the overall federally funded contracts that should go to DBEs if there was a level playing field. ACCMA selected *use of DBE directories and Census Bureau data* as defined in the Caltrans Local Assistance Procedures Manual (LAPM), Chapter 9, Section 9.7 for guidance in developing the AADPL.

Step 1

- Determine the Market Area
After examining relevant available evidence, ACCMA identified the local market area as 1) the area where substantial majority of the contractors and subcontractors with which ACCMA does business is located, and 2) the area which ACCMA spends the substantial majority of its contracting dollars. The local market area is the 9-county Bay Area including Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma counties.
- Use applicable North American Industry Classifications System Codes for work categories to be awarded
(See Table 1)
- Obtain total number of establishments listed in the market area using the County Business Patterns database
We use the 2006 Census Bureau's County Business Pattern (CBP) database, to determine the number of ready, willing and able businesses available in the market area that performs work in the same North American Industry Classification System codes. We then divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in our market area.
- Obtain total number of DBE & UDBE businesses located within the market area using the California Unified Certification Program database

Table 2: Includes all of the anticipated NAICS Codes for FFY 2009/2010. For each anticipated NAICS Code and work category, the table lists the DBE availability, % of total funding, and the weighted DBE availability.

The DBE availability for each NAICS code was calculated using the following formula:

$$\text{Base Figure} = \left[\frac{\sum \text{No. of DBEs in a Work Category}}{\text{No. of All firms in NAICS code in same Work Category}} \times \text{Weight} \right] \times 100$$

The resulting weighted availabilities were then added together to derive a base figure. The base figure is therefore 5.21 percent for overall AADPL. Race Neutral = AADPL – RC Portion. (5.18% - 4.02% = 1.16%), see Table 2.

Step 2

In this step, we reviewed the relevant evidence (see table 2 on page 7) to determine whether an up or down adjustment from the base figure is needed. ACCMA has determined that the Census data and the UCP DBE database represent a realistic number of contractors that could potentially bid on these contracts. Based on this information, no adjustment needed of the overall AADPL base figure. The AADPL base figure will remain at 5.18 percent as established in Step 1.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

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Planned Race-Neutral Measures

ACCMA plans to implement the following Race-Neutral measures during the FFY 09/10: 1) participating in DBE workshops and outreach efforts, targeting minority, women, local and small business participation, 2) publishing all contracting opportunities on the ACCMA website (www.accma.ca.gov), 3) hold mandatory pre-bid meetings, when necessary 4) assist women, minority, local and small businesses with bonding and insurance, when necessary, 5) mass emailing DBE's notices of procurements, and 6) ensure compliance to prompt payment specifications.

The DBE Liaison Officer will also assist prospective contractors to identify DBE firms that are ready, willing, and able to subcontract.

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. (see Attachment A)

49 CFR Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause, with the local agency's prior written approval. Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.

Dennis R. Fay
(Signature)

8-25-09
Date

Dennis R. Fay, Executive Director
(510) 836-2560
Alameda County Congestion Management Agency

(Signature of Caltrans District Local Assistance Engineer [DLAE])

Date

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE – Local Agency

DBE Annual Submittal Form (04/01/08)

(Attachment A)

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- ☐ **Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☐ **Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☒ **Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Table 1

Contract		NAICS Code	Type of Work	\$ Amount of Total Contract	% of Total Fed-Assisted Contracting	Project Manager
180 Rail Corridor Study Project						Beth Walukas
1	Planning	541990	Other professional, scientific and technical services	\$ 735,000	6.24%	
180 Rail Corridor Study Project Total				\$ 735,000	6.24%	
Berkeley-Oakland-San Leandro Corridor Enhancement Project						Beth Walukas
2	Planning, Environmental, Preliminary Engineering	541620	Environmental Consulting Services	\$ 450,000	3.82%	
Berkeley-Oakland-San Leandro Corridor Enhancement Project Total				\$ 450,000	3.82%	
I-80 Gilman Project						Beth Walukas
3	Environmental	541990	Other professional, scientific and technical services	\$ 200,000	1.70%	
		541620	Environmental Consulting Services	\$ 1,100,000	9.34%	
I-80 Gilman Project Total				\$ 1,300,000	11.04%	
ITS Project - Electrical Field Technicians						John Hemup
4	Field Equipment Management	238210	Electrical Contractor and other wiring services	\$ 250,000	60.98%	
ITS Project - Electrical Field Technicians				\$ 250,000	2.12%	
ITS Project - Communications Systems						John Hemup
5	Field Communication Management	518210	Data Processing, Hosting and Related Services	\$ 200,000	48.78%	
		517410	Telecommunications	\$ 210,000	1.78%	
ITS Project - Communications Systems				\$ 410,000	3.48%	
LOS Monitoring Project - Traffic Data Analysis						Beth Walukas
6	Traffic Data Analysis	541990	Other professional, scientific and technical services	\$ 170,000	100.00%	
Los Monotoring Project - Traffic Data Analysis				\$ 170,000	1.44%	
I580 EB HOT Lane Project						Ray Alkawi
7	Systen Integrator	541990	Other professional, scientific and technical services	\$ 6,300,000	84.00%	
		238210	Electrical Contractor and other wiring services	\$ 1,200,000	16.00%	
I580 EB HOT Lane Project				\$ 7,500,000	63.69%	
Webster Street SMART Corridor Project						Cyrus Minogfar
8	Construction	238210	Electrical Contractor and other wiring services	\$ 850,000	88.54%	
		237310	Construction	\$ 110,000	0.93%	
Webster Street SMART Corridor Project				\$ 960,000	8.15%	
Total FY 2009/2010 Federally-Assisted Contracting:				\$ 11,775,000	100.00%	

Table 2

NAICS Code	Type of Work	All Firms	DBE Firms	DBE Availability	Dollar Amount	% of Total Funding	Weighted Availability
541990	Other professional, scientific and technical services	525	23	4.38%	\$ 7,405,000	62.89%	2.76%
541620	Environmental Consulting Services	296	32	10.81%	\$ 1,550,000	13.16%	1.42%
238210	Electrical Contractor and Other wiring services	1677	42	2.50%	\$ 2,300,000	19.53%	0.49%
237310	Construction	183	85	46.45%	\$ 110,000	0.93%	0.43%
518210	Data Processing, Hosting and Related Services	616	29	4.71%	\$ 200,000	1.70%	0.08%
517410	Telecommunications	17	0	0.00%	\$ 210,000	1.78%	0.00%
Total FY 2009/2010 Federally-Assisted Contracting:					\$ 11,775,000	100%	5.18%
NAICS Code	Type of Work	All Firms	UDBE Firms	UDBE Availability	Dollar Amount	% of Total Funding	Weighted Availability
541990	Other professional, scientific and technical services	525	18	3.43%	\$ 7,405,000	62.89%	2.16%
541620	Environmental Consulting Services	296	25	8.45%	\$ 1,550,000	13.16%	1.11%
238210	Electrical Contractor and Other wiring services	1677	34	2.03%	\$ 2,300,000	19.53%	0.40%
237310	Construction	183	58	31.69%	\$ 110,000	0.93%	0.30%
518210	Data Processing, Hosting and Related Services	616	21	3.41%	\$ 200,000	1.70%	0.06%
517410	Telecommunications	17	0	0.00%	\$ 210,000	1.78%	0.00%
Total FY 2009/2010 Federally-Assisted Contracting:					\$ 11,775,000	100.00%	4.02%
					2009/10 AADPL	RC Component	RN Component
	Alameda				5.18%	4.02%	1.16%
	Contra Costa						
	Marin						
	Napa						
	San Francisco						
	San Mateo						
	Santa Clara						
	Solano						
	Sonoma						

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